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Alert | Delaware Corporate Law



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Delaware Supreme Court Applies the Business Judgment Rule to Fiduciary Duty Claims Related to Reincorporation Out of Delaware

The Delaware Supreme Court, in *Maffei v. Palkon*, No. 125, 2024 (Del. Feb. 4, 2025), has reversed the Court of Chancery and decided that business judgment deference applied to breach of fiduciary duty claims related to a controlled corporation's decision to reincorporate from Delaware to Nevada. The Delaware Supreme Court held that claims regarding additional litigation or liability protections that TripAdvisor's controlling stockholder and/or board of directors could receive following the conversion from a Delaware to Nevada corporation were highly speculative. The speculative nature of such claims failed to demonstrate that there was a material non-ratable benefit involved in the conversion which created a conflicted controller transaction subject to entire fairness review.

On a motion to dismiss these claims, the Delaware Court of Chancery previously held that the controlling stockholder and board of directors of TripAdvisor and its affiliate Liberty TripAdvisor would receive a material unique benefit in the reincorporation, in the form of greater protection from personal liability afforded by Nevada law. As a result, the Court of Chancery determined that the entire fairness standard of review would apply in the absence of Delaware law procedures for cleansing breach of fiduciary duty claims.

Given the important legal issues involved, the Delaware Supreme Court accepted an interlocutory appeal. The Delaware Supreme Court noted that temporality of any litigation against the defendants (and

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corresponding benefits of protection in such litigation) is a key factor in determining the materiality of any unique benefits that the defendants might derive from the reincorporation. In the absence of allegations that the reincorporation was used to avoid threatened or pending litigation or in contemplation of a particular transaction, the Court viewed any benefit as too speculative to be material and therefore determined that the reincorporation was not subject to entire fairness review. The Court also noted that, although it was not an independent ground for its decision, its holding furthered the goals of comity by declining to engage in a comparison of the Delaware and Nevada corporate governance regimes.

This decision provides useful guidance regarding the standard of review applicable to breach of fiduciary duty claims related to reincorporation transactions (including mergers, conversions, and domestications), as well as board considerations in connection with such a transaction. We will continue to monitor this issue from Delaware, Nevada, and other related perspectives.

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